

United States District Court  
Northern District of California

ROSALINA CALONGE,  
Plaintiff,  
v.  
CITY OF SAN JOSE, and others,  
Defendants.

Case No. 20-cv-07429-NC

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
REVIEW OF TAXATION OF  
COSTS**

Re: ECF 104

Before the Court is Plaintiff Rosalina Calonge’s motion to review taxation of costs. Ms. Calonge is the mother of Francis Calonge, who was shot and killed during an encounter with San Jose police. ECF 1 (“Compl.”) ¶ 2. Plaintiff alleged civil rights claims against Defendants City of San Jose and Officer Edward Carboni (collectively, “Defendants”). However, the present motion arises from Defendants’ successful motion for summary judgment, which dismissed Plaintiff’s entire case. Despite Defendants’ status as the prevailing party, Plaintiff claims her personal finances, coupled with the public importance of the case, should excuse her from paying Defendants’ litigation costs. Based on Plaintiff’s asserted points, the Court GRANTS Plaintiff’s motion for review of the taxation of costs, and DECLINES to award costs.

## I. LEGAL STANDARD

Under Federal Rule of Civil Procedure 54(d)(1), "costs – other than attorney's fees

1 – should be allowed to the prevailing party.” The rule creates a presumption in favor of  
2 awarding costs to the prevailing party, but courts have the discretion to refuse to award  
3 costs. *Ass’n of Mexican-Am. Educators v. State of California*, 231 F.3d 572, 591 (9th Cir.  
4 2000). In light of this presumption, “it is incumbent upon the losing party to demonstrate  
5 why the costs should not be awarded.” *Stanley v. Univ. of S. California*, 178 F.3d 1069,  
6 1079 (9th Cir. 1999).

7 The court’s decision to refuse the award costs must be accompanied by specific,  
8 affirmative reasons to support this decision. *Save Our Valley v. Sound Transit*, 335 F.3d  
9 932, 945 (9th Cir. 2003). A court may consider several factors in its decision to deny  
10 costs, including (1) the substantial public importance of the case, (2) the closeness and  
11 difficulty of the issues in the case, (3) the chilling effect on future similar actions, (4) the  
12 plaintiff’s limited financial resources, and (5) the economic disparity between the parties.  
13 *Escriba v. Foster Poultry Farms, Inc.*, 743 F.3d 1236, 1247–48 (9th Cir. 2014). “This is  
14 not an exhaustive list of ‘good reasons’ for declining to award costs, but rather a starting  
15 point for analysis.” *Id.* (quoting *Ass’n of Mex.-Am. Educators*, 231 F.3d at 593).

## 16 II. DISCUSSION

17 As a preliminary matter, the parties do not dispute that Defendants are the  
18 prevailing parties for purposes of this motion. The crux of Plaintiff’s claims concerned the  
19 intersection of police use of force and mental health. Civil rights claims under § 1983 are  
20 “‘important for safeguarding the rights and safety’ of individuals who believe individuals  
21 acting in their official capacities have acted illegally.” *Berry v. City & Cnty. of San*  
22 *Francisco*, No. 17-cv-00056-EDL, 2018 WL 5733680, at \*1 (N.D. Cal. Oct. 29, 2018)  
23 (quoting *Draper v. Rosario*, 836 F.3d 1072, 1088 (9th Cir. 2016)). Identifying and  
24 responding to individuals undergoing mental health crises presents an ongoing challenge to  
25 police departments. *See Deorle v. Rutherford*, 272 F.3d 1272, 1283 (9th Cir. 2001);  
26 *Sommers v. City of Santa Clara*, 516 F. Supp. 3d 967, 988 (N.D. Cal. 2021). Cases such as  
27 this one may help inform police conduct when addressing such fraught situations, which  
28 ultimately inures to the public’s benefit. *Berry*, 2018 WL 5733680, at \*1. Conversely, the

1 imposition of costs may lead to the opposite result, wherein future civil rights plaintiffs  
2 may forgo litigating their claims at the risk of being saddled with thousands of dollars in  
3 fees and costs if they lose. *See Draper*, 836 F.3d at 1088. Based on the general  
4 importance of civil rights litigation, particularly the salient issue presented in this case,  
5 coupled with the risk of chilling future claims, the Court finds these factors weigh in favor  
6 of denying costs.

7 “Indigency is a factor that the district court may properly consider in deciding  
8 whether to award costs.” *Stanley v. Univ. of S. California*, 178 F.3d 1069, 1079 (9th Cir.  
9 1999). When analyzing a party’s financial resources, “[t]here are no hard and fast rules for  
10 assessing a losing party’s indigency or inability to pay; district courts should use their  
11 common sense in making this determination.” *Ayala v. Pac. Mar. Ass’n*, No. 08-cv-0119-  
12 TEH, 2011 WL 6217298, at \*2 (N.D. Cal. Dec. 14, 2011) (citing *In re Paoli R.R. Yard  
PCB Litig.*, 221 F.3d 449, 463–64 (3rd Cir.2000)).

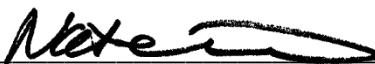
14 Plaintiff submitted a declaration outlining her financial situation. ECF 104-1.  
15 While she presently works full-time as a machinist, “all [her] income . . . goes towards  
16 [her] rent and living expenses.” *Id.* ¶ 7. Plaintiff is not enrolled in any governmental  
17 financial assistance programs. *Id.* ¶ 6. To supplement her budget, Plaintiff relies on  
18 assistance from her local church on a bi-weekly basis. *Id.* Based on Plaintiff’s  
19 representations of her limited financial resources, the Court finds this factor weighs in  
20 favor of denying costs.

21 **III. CONCLUSION**

22 Upon consideration of all the relevant factors, the Court GRANTS Plaintiff’s  
23 motion for review of the taxation of costs and DECLINES to award costs.

24 **IT IS SO ORDERED.**

26 Dated: May 1, 2023

  
27 NATHANAEL M. COUSINS  
United States Magistrate Judge